

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

_____ X
UNITED STATES OF AMERICA, : Criminal Action
Plaintiff, : No. 2:18-cr-00186
v. :
CONNOR ANTHONY PUTILLION, :
Defendant. :
_____ X

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT COURT JUDGE
IN CHARLESTON, WEST VIRGINIA
May 22, 2019

APPEARANCES:

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VICTIM IMPACT STATEMENT

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1 PROCEEDINGS had before The Honorable Joseph R.
2 Goodwin, Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 May 22, 2019, at 2:30 p.m., as follows:

5 THE COURT: Good afternoon.

6 COURTROOM DEPUTY CLERK: The matter before the
7 Court is *United States of America v. Connor Anthony*
8 *Putillion*, Criminal Action No. 2:18-cr-00186.

9 THE COURT: Is the United States ready to proceed?

10 MS. RADA-HERRALD: Yes, Your Honor.

11 THE COURT: Defendant ready?

12 MR. CAGLE: We are, Your Honor.

13 THE COURT: Defendant and defense counsel please
14 stand.

15 Madam Clerk, would you administer the oath to Mr.
16 Putillion.

17 **CONNOR ANTHONY PUTILLION, DEFENDANT, SWORN**

18 THE COURT: Mr. Putillion, on January 24th, 2019,
19 before this court you pleaded guilty to attempted receipt of
20 child pornography in violation of 18 United States Code
21 Sections 2252A(a)(2) and 2252A(b)(1) as charged in Count
22 Three of an indictment returned against you by the grand
23 jury.

24 At the time of your plea hearing, I had rejected the
25 plea agreement that the parties had entered into after

1 learning that the other counts had already been dismissed
2 and the plea agreement had been substantially carried out.
3 In any event, I can't remember if the government objected.
4 I don't know whether I need to make a record or not.

5 MS. RADA-HERRALD: I do not recall, Your Honor. I
6 don't believe there was an objection listed on the record.

7 THE COURT: All right.

8 Mr. Putillion, since the time of your guilty plea the
9 United States Probation Office has conducted a presentence
10 investigation of you and prepared a written presentence
11 investigation report.

12 Mr. Cagle, have you and your client received a copy of
13 that report and had an opportunity to review it and discuss
14 it?

15 MR. CAGLE: Yes, sir, we have, and I did.

16 THE COURT: Having done so is there any reason why
17 sentencing should not take place today?

18 MR. CAGLE: No, sir.

19 THE COURT: Mr. Putillion, have you read the
20 presentence report and discussed it with your lawyer?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand the contents of the
23 report?

24 THE DEFENDANT: I do, sir.

25 THE COURT: Do you understand it?

1 THE DEFENDANT: Yes.

2 THE COURT: I've carefully reviewed the probation
3 officer's presentence report and the attached addendum to
4 it. It appears the government has no remaining objections
5 to the report, but the defendant has eight objections. Let
6 me address those one at a time.

7 MR. CAGLE: Yes, sir.

8 THE COURT: First, the defendant objects to the
9 application of United States Sentencing Guideline Section
10 2G2.2(c)(1), which directs the application of 2G2.1 under
11 certain circumstances. 2G2.2(c)(1) states that, "if the
12 offense involved causing, transporting, permitting or
13 offering or seeking by notice or advertisement a minor to
14 engage in sexually explicit conduct for the purpose of
15 producing a visual depiction of such conduct or for the
16 purpose of transmitting a live visual depiction of such
17 conduct, apply 2G2.1, if the resulting offense is greater
18 than that determined under 2G2.2."

19 I have read the objection and counsel's arguments.
20 Anything further you would like to argue on that, Mr. Cagle?

21 MR. CAGLE: Judge, no, other than to emphasize
22 that which I have written both when that first came up with
23 the government's objection to the initial report and
24 thereafter. We think that that provision (c)(1), the
25 cross-reference provision, has no application and has been

1 incorrectly applied to the facts of this case; never would
2 appear to be intended to be applied even under the cited
3 authority from the Eleventh Circuit Court of Appeals, which
4 addresses 2251. All the cases relied upon there were 2251.
5 The Appendix A is very specific that it does not, at least
6 according to the appendix, apply to this case, nor would it
7 be factually correct to do so.

8 THE COURT: Ms. Herrald.

9 MS. RADA-HERRALD: Thank you, Your Honor. Just
10 briefly, with regard to the argument about what Appendix A
11 contains, Appendix A is the starting point, and obviously we
12 do start there with the offense of conviction. That takes
13 us to 2G2.2.

14 It is within 2G2.2, which was correctly the beginning
15 point for this offense of conviction, where we find the
16 cross-reference. And as the United States set forth, that
17 cross-reference does apply in this matter. That is how we
18 get to 2G2.1. It's not based upon the offense of
19 conviction. It is based entirely upon the cross-reference,
20 which is within the proper starting point under the
21 guidelines.

22 As this has been ostensibly briefed by the United
23 States already, I will just point out one thing. In the
24 *Caniff* decision out of the Eleventh Circuit -- the United
25 States didn't cite to this because it's an unpublished

1 opinion, but that circuit does cite to specifically cases
2 that have dealt with this cross-reference, the
3 cross-reference in 2G2.2(c)(1).

4 Specifically, the Eleventh Circuit notes an unpublished
5 Third Circuit opinion that held that notice for purposes of
6 that cross-reference applies to one-on-one communications,
7 just as seen here. This is at page 935 to 936 of the *Caniff*
8 decision.

9 It also notes, in the *Caniff* decision, that the Third
10 Circuit unpublished opinion was based upon a prior ruling in
11 another case called *Harrison* that had -- under the prior
12 version of 2G2.2, there was a different provision under
13 (b) (5) that also dealt with this notice and advertisement.
14 And that term of notice had also been used to apply to
15 one-on-one e-mail communications.

16 So there is precedent, within both the guidelines and
17 the similarly worded statute found at 2251, to apply the
18 term notice to one-on-one communications, just as were had
19 in this case.

20 So there are a number of different reasons that notice
21 applies to one-on-one communications and is applicable to
22 the defendant's communications.

23 THE COURT: Mr. Cagle.

24 MR. CAGLE: Well, Your Honor, always, when I'm
25 told about an unpublished opinion, I will just say what I

1 would say. I've never seen the unpublished opinion. That's
2 sort of not something that I have seen, but I did note that
3 they were not from the Fourth Circuit Court of Appeals. And
4 I go back to my comments that factually this seems an
5 inappropriate application because of the -- what was at
6 least in the discovery provided as to what the notice -- or
7 what the -- what the communication was.

8 So my argument would be it's not -- it's not within the
9 legal framework, nor is it factually applicable. And the
10 citation to *Caniff* would indicate that it's applied in 2251.
11 This is a 2252 case.

12 And all of the cases cited by *Caniff* were individuals
13 involved in basically sex slave trafficking, or at least in
14 the sense of child porn industry types, with groups that
15 were passing this kind of porn around on the Internet or
16 through other electronic communications. That's not what we
17 have here, Judge.

18 And, of course, without getting to the other arguments
19 in my objection, that this seems to be highly -- it seems to
20 be well beyond that which would be contemplated by the
21 conduct here.

22 The government's asking for a minimum of 14 years.
23 It's not a 14-year case. And I will stand on my comments in
24 that which I submitted to the court. That's outrageous
25 under the circumstances for this person who made an attempt

1 he's acknowledged to be wrong; we know that. And he's not
2 in the sex trafficking business. And to suggest that, the
3 application of this will triple what was originally not only
4 what we had determined to be the appropriate sentence, but,
5 in fact, originally the probation office had determined it
6 to be the appropriate. Now they want to triple it.

7 He did not get pictures and he did not receive the
8 pictures that are -- that were requested. Whatever they
9 were, he got nothing. It's an attempt. I acknowledge that
10 an attempt is treated as a completed act in the statute. It
11 is, but it's still an attempt. He didn't get it. His
12 situation is distinguishable from *Caniff* and from every
13 other case upon which I've read that *Caniff* relies.

14 THE COURT: All right. You can take a seat for a
15 minute while I rule on this.

16 I overrule the defendant's objection. While reading
17 "by notice or advertisement" as a qualifier to every verb in
18 the guideline is a plausible reading, a more plausible
19 reading limits the qualifier to the word "seeking."

20 The disjunctive "or" before and after "offering"
21 separates the first group of verbs from "seeking by notice
22 or advertisement." Any other reading would create
23 surplusage and, frankly, impossibilities. For example,
24 "transporting by notice" seems to be describing impossible
25 conduct.

1 In the case of *United States v. Crandon*, 173 F.3d at
2 page 122, which starts at 122, it says on page 129 that --
3 well, basically on 129 they reject the argument that the
4 language of the cross-reference only pertains to crimes
5 promulgated by "notice or advertisement." By the way, that
6 Third Circuit case was decided in 1999.

7 Furthermore, as the guideline commentary explains, the
8 cross-reference in (c)(1) is "to be construed broadly and
9 includes all instances where the offense involved employing,
10 using, persuading, inducing, enticing, coercing,
11 transporting, permitting, or offering or seeking by notice
12 or advertisement, a minor to engage in sexually explicit
13 conduct for the purpose of producing any visual depiction of
14 such conduct or for the purpose of transmitting live any
15 visual depiction of such conduct." And it cites at 2G2.2,
16 comment 7(A).

17 The quote -- and I'm quoting -- "The cross-reference
18 merely implements the common sense notion that a receiver or
19 possessor who has manufactured," or attempted to
20 manufacture, "the pornography in his possession is both more
21 culpable and more dangerous than the one who has received or
22 possessed the pornography and no more." That's *United*
23 *States v. Dawn*, 129 F.3d at 878, page 884, Seventh Circuit,
24 1997. Also see *Starr*, 486 F.Supp.2d at 945.

25 "Though the one-on-one electronic communications" --

1 such as Snapchat here -- "a sexual predator can more easily
2 isolate and prey on a single vulnerable child victim than if
3 he sent a widely disseminated notice or ad to many potential
4 victims." That's found on page 936 of the *Starr* case. I'm
5 not sure that's the *Starr* cite. I'll check that.

6 Moreover, the plain weight of authority supports a
7 finding here today that I've made. Courts have found that
8 one-on-one messaging, including e-mail, text messages,
9 online chats and instant messaging, are all encompassed
10 within the definition of notice. See *United States v.*
11 *Long*, 304 F.App'x 982 at 986, Third Circuit, 2008. *United*
12 *States v. Merrill*, 578, F.Supp.2d, 1144 at 1153 out of the
13 Northern District of Iowa, 2008. See also *United States v.*
14 *Caniff*, 916 F.3d, 929, Eleventh Circuit, 2019.

15 I find that the defendant, through the Snapchat
16 messaging application, sought by notice sexually explicit
17 conduct from the minor victim and I find the cross-reference
18 applies.

19 Give me a second. What's that 936?

20 MS. RADA-HERRALD: Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. RADA-HERRALD: I believe that's on page 936 of
23 the *Caniff* decision.

24 THE COURT: Of the *Caniff* decision, very well.

25 MS. RADA-HERRALD: I had that highlighted already

1 myself.

2 THE COURT: And a full cite for the *Caniff* is 916
3 F.3d at 929, right? Is that right?

4 MS. RADA-HERRALD: Yes, Your Honor.

5 THE COURT: All right.

6 Next, the defendant objects to the standard conditions
7 of supervised release in paragraphs 97, 101, 102 and 105.
8 Specifically 97: The defendant shall have no direct or
9 indirect contact at any time for any reason with the victim
10 identified in the presentence report or the victim's family.

11 Let me take them one at a time. Do you want to add
12 something to your objection to that?

13 MR. CAGLE: Your Honor, I do want to -- this was
14 sort of an overview of it. And I give my credit to my
15 client brought this U.S. Supreme Court opinion to my
16 attention is *Packingham v. North Carolina*. It's a 2017
17 opinion of the U.S. Supreme Court that struck down a North
18 Carolina statute for impermissibly restricting lawful speech
19 in violation of the First Amendment. I do have a citation
20 on that. It's not yet in U.S., but it's in 137 Supreme
21 Court 1730. I think that there are restrictions there in
22 what I guess are the common restrictions placed upon those
23 who find themselves convicted of that which my client finds
24 himself convicted of. And it seemed to implicate the First
25 Amendment. And not so much the one you just read, and I'll

1 take them one-by-one.

2 Our objection to the family, as I recollect, would be
3 he's going to have to have some communication, we would
4 hope, at some point with what would be his ex-wife and she's
5 a member of the family. And it's because they have two
6 children together. And it would be awful difficult not to
7 have some method of communicating vis-à-vis the children
8 born of their marriage.

9 THE COURT: Ms. Herrald.

10 MS. RADA-HERRALD: Thank you, Your Honor.

11 I believe this may be able to be something that can be
12 remedied through the probation office. The probation office
13 can work as sort of a go-between as needed. And to the
14 extent that an arrangement can be worked out where there --
15 direct communication is acceptable to the victim's family,
16 the probation office can facilitate that. And to the extent
17 that the victim's family would prefer not to have direct
18 communication, communication regarding those children can go
19 through the probation office and be approved by the
20 probation office in advance.

21 THE COURT: It seems to me that I ought to make
22 clear, in dealing with this objection, that this defendant
23 will be entitled to have contact with his children, but I
24 believe that it will be appropriate that that be done with
25 the approval of his probation officer and in accordance with

1 any domestic relations order entered by the state court.

2 Mr. Cagle.

3 MR. CAGLE: Yes, sir.

4 THE COURT: Does that sound all right?

5 MR. CAGLE: Yes, sir. I mean, honestly, we're
6 talking about things that aren't going to happen in the next
7 few months, so I would think that's fine for now. I am
8 looking ahead. Let's assume he's out in, if lucky enough,
9 to be five or six years, you know, by that time everything's
10 going to be electronic, everything.

11 THE COURT: I understand. And one of the things
12 that has happened, over the several years that child
13 pornography crimes have been on the books in the federal
14 courts, is the restrictions on supervised release and the
15 wording thereof have gotten longer and longer and longer.
16 And in certain instances, some of which you've raised, I
17 disagree with them. So we'll try to go through each one of
18 them.

19 MR. CAGLE: Okay.

20 THE COURT: But it seems to me that as to that
21 first one, the solution I've stated is perfectly reasonable.

22 MR. CAGLE: Yes, sir.

23 THE COURT: The second one is to paragraph 107,
24 the defendant shall not access or possess any material
25 depicting sexually explicit conduct as defined by statute,

1 including any photograph, film, video, picture or computer
2 or computer-generated image or picture, nor shall the
3 defendant knowingly enter or knowingly remain in any
4 location, without the prior approval of the probation
5 officer, where such materials can be accessed, obtained or
6 viewed, including pictures, photographs, books, writings,
7 drawings, videos or video games.

8 Without hearing your argument, I find that overly
9 broad. That means you can't go in a public library. I
10 think a simple statement that this defendant shall not
11 access or possess any material depicting sexually explicit
12 conduct as defined by statute is a valid condition and that
13 is the one I will impose.

14 MR. CAGLE: Yes.

15 THE COURT: Does that take care of that?

16 MR. CAGLE: Yes, sir, it does.

17 THE COURT: Paragraph 102, the defendant shall not
18 use, purchase, possess, procure or otherwise obtain any
19 computer or electronic device that can be linked to any
20 computer networks, bulletin boards, Internet, Internet
21 service providers or exchange formats involving computers
22 unless approved by the probation officer for such purposes
23 as looking for employment opportunities and submitting
24 applications to perspective employers through the Internet;
25 defendant's lawful gainful employment by a business entity;

1 use by immediate family member living in defendant's same
2 household or for other legitimate purpose. Such computers,
3 computer hardware or software possessed solely by the
4 defendant is subject to searches and seizures by the
5 probation office.

6 Once again, taking your objection into account, I find
7 that overly broad in light of the state of society and of
8 the development of technology today. I do not think an
9 overly broad restriction on the possession or access of all
10 computer or digital devices is workable in today's society.

11 What I do believe is perfectly workable is to provide,
12 as a condition of supervised release, that, to the extent
13 the defendant has possession of any such device, he must
14 disclose that, before obtaining it or upon obtaining it, to
15 the probation officer and that device shall be subject to
16 search at any time on home visit during the period of
17 supervised release.

18 MR. CAGLE: Judge, just to be specific, I
19 appreciate that, and as with most of these, are just overly
20 broad and unworkable, frankly, but I will point out
21 refrigerators are computers now.

22 THE COURT: I know.

23 MR. CAGLE: And he will not be able to do any
24 banking absent. He couldn't do any banking before this.

25 THE COURT: I'm with you on this.

1 MR. CAGLE: I understand.

2 THE COURT: So what I am suggesting, to the extent
3 that it doesn't become absurd, like the remote-operated
4 refrigerator or one that talks to you when the ice cream is
5 frozen, using devices, information-obtaining devices and
6 display devices that are connected to the Internet, have to
7 be with the permission of the probation officer and subject
8 to search. I'll try to word it as well as I can.

9 MR. CAGLE: I understand.

10 THE COURT: And if the Fourth Circuit wants to
11 reformulate the way I've written it, they are welcome to
12 give it a shot.

13 MR. CAGLE: I think the court understands our
14 objections and we'll go through them as you wish.

15 THE COURT: Next, the defendant shall not
16 purchase, possess or consume alcohol or not frequent any
17 business whose primary function is to serve alcoholic
18 beverages. That's pretty much a standard condition of
19 supervised release.

20 One of the things we expect felons to do is abstain
21 from mind-altering drugs of any sort during the period of
22 their supervised release. Petitions to modify the
23 conditions or terms of supervised release are always
24 appropriate filings and you'll note that it is a business
25 whose primary function is to serve alcoholic beverages. So

1 going out to dinner at a place where they serve alcoholic
2 beverages is not meant to be prohibited. What we're trying
3 to do is keep convicted felons from getting drunk or high is
4 what it boils down to.

5 MR. CAGLE: Understood, Judge.

6 THE COURT: Any other objections?

7 MR. CAGLE: I mean, there were other objections.
8 There was one about having to introduce himself as, "Hello.
9 I'm a convicted sex offender."

10 THE COURT: I've got some more here.

11 MR. CAGLE: Yeah.

12 THE COURT: Well, the objections to paragraphs 97,
13 101, 102 and 105 are sustained to the extent announced by
14 the court and overruled in all other respects.

15 The next objection is the defendant objects to the
16 optional condition in paragraph 107, which says: The
17 defendant shall not associate or have verbal, written,
18 telephonic or electronic communications with any minor,
19 except in the presence of the parent or legal guardian of
20 said minor, on the condition that the defendant notifies the
21 parent or legal guardian of the defendant's sex offender
22 conviction and with written approval from the probation
23 officer. This provision does not encompass minors working
24 as waiters, cashiers, ticket vendors, and similar service
25 personnel with whom the defendant must deal in order to

1 obtain ordinary and usual commercial services.

2 While the court finds that the probation staff, and no
3 doubt probation staffers in Washington and others have made
4 a valiant attempt to write something workable, I don't think
5 this is workable either. This defendant may not be in the
6 company of a minor without another adult being present at
7 the time.

8 MR. CAGLE: Would that include his own children?

9 THE COURT: I will leave that up to the -- I
10 assume the good sense of the domestic relations judge or
11 circuit court judge that's handling -- is the divorce over?

12 MR. CAGLE: Yes, it is.

13 THE COURT: What do they say about visitation?

14 MR. CAGLE: Well, it doesn't have any because he's
15 incarcerated, so he's still restricted.

16 THE COURT: Well, whenever it happens, they can
17 decide that. There always was, quite sensibly, in federal
18 jurisdiction an exception in our jurisdiction for cases
19 involving domestic relations and I'm going to continue to
20 honor that tradition and stay out of it.

21 MR. CAGLE: It's a good decision.

22 THE COURT: It's obvious to me that we send people
23 to jail and put them on supervision for a number of reasons:
24 For punishment, for deterrence and for protection of the
25 public. What we don't do is send people to jail or put them

1 on supervised release for those conditions to further punish
2 them in different ways. So I'm going to leave it as no
3 association with children, when he's alone without another
4 adult, except as permitted by his probation officer or as
5 allowed by domestic relations court order.

6 Since that's the first and only time I've said that,
7 we'll need to get that out of the transcript.

8 Do you want to have an objection to that?

9 MS. RADA-HERRALD: Yes, Your Honor, the United
10 States would just preserve an objection to that. Thank you.

11 THE COURT: Again, I welcome any rewrites.

12 So the objection is sustained to the extent that I have
13 said so and overruled to the extent that I have permitted
14 such associations.

15 The defendant objects to the optional condition in
16 paragraph 108, which states: The defendant shall not loiter
17 within 100 feet of any parks, school property, playgrounds,
18 arcades, amusement parks, day care centers, swimming pools,
19 community recreation fields, zoos, youth centers, video
20 arcades, carnivals, circuses or other places that are
21 primarily used or can reasonably be expected to be used by
22 minors without prior written permission of the probation
23 officer.

24 MR. CAGLE: Your Honor, the reason for that has to
25 do with visitation with his children in where he might want

1 to take children. Just, for example, if his kid is playing
2 little league baseball or a swimming pool or something.

3 MS. RADA-HERRALD: Your Honor, there's already an
4 exception carved out for prior approval from the probation
5 office and the defendant could easily get prior written
6 approval to take his children to a swimming pool.

7 THE COURT: I, again, think this is an overly
8 broad statement and not a very inclusive one. It attempts
9 to include everywhere you might find kids, but I can think
10 of another several dozen places where kids primarily hang
11 out that they haven't figured out to put in this paragraph
12 yet.

13 The general idea is we don't want you loitering around
14 children, period, and that should not be necessarily place
15 based. I have a hard time with the word loitering and with
16 the juris prudence with regard to constitutionality of
17 loitering statutes.

18 I think the best way I can do this is to say that the
19 defendant may not hang out, loiter, or spend time -- I don't
20 know how to say it. I have to think of a way.

21 MS. RADA-HERRALD: Your Honor, might I suggest an
22 amendment that Judge Copenhaver has made on several
23 occasions to this. He has amended it to state the defendant
24 shall not enter any park, school property, et cetera. He
25 removes the loiter within 100 feet of and changes that to

1 enter.

2 THE COURT: I think that works out just fine. I
3 still think it is not inclusive. There are lots of other
4 places, like skateboard parks, not mentioned there, roller
5 skating rinks, ice skating rinks. I mean, if we try to be
6 all-inclusive, we end up being silly.

7 The defendant needs to stay away from places where
8 there are mostly kids hanging out where he would be
9 observing them.

10 I'm going to say I will adopt Judge Copenhaver's
11 wording and make the word enter rather than loiter -- rather
12 than loiter within 100 feet and still say, for your
13 purposes, Mr. Cagle, that I think the following language is
14 very broad and suspect.

15 MR. CAGLE: Yeah, the overarching concern, Judge,
16 we had was it's as if he could get in trouble in unintended
17 ways, that he has no animus toward doing anything that is
18 wrong, and yet he could be in violation of this.

19 THE COURT: I can tell you this is just anecdotal,
20 but it's the best I have for you, that, in 25 years of
21 handling these cases, I've never had somebody brought before
22 me for violating because they went to the circus or any of
23 these other places. The probation officers have good sense.
24 Your client gets in trouble if he acts like a sex offender
25 and does things that makes people nervous. So I'm going to

1 leave it worded as it is and you can take it up with the
2 Fourth Circuit.

3 MR. CAGLE: I really don't want to, but I might
4 have to. I understand.

5 THE COURT: The defendant objects to the optional
6 condition in paragraph 109 that defendant not purchase,
7 possess or control cameras, cam corders or movie cameras
8 without prior approval of the probation officer.

9 The defendant may only use or possess cell phones that
10 are limited by design to vocal telephone communication
11 without the capability to access the Internet or store or
12 create images or video without prior approval of the
13 probation officer.

14 I'm not going to impose that condition. I think it's
15 totally unrealistic. I'm sure you can still buy flip phones
16 for old people that are simple phones, but hopefully Mr.
17 Putillion, after serving what's going to be a very
18 considerable period in prison, will be able to reintegrate
19 into society, and with what is going to be very careful
20 supervision, be able to reestablish himself as a citizen of
21 the community. So I'm not going to impose that condition.

22 I'll show your objection.

23 MS. RADA-HERRALD: I did just want to suggest an
24 alternative, in addition to preserving the United States'
25 objection, that there at least be some requirement that any

1 such devices that may exist in the future that he possesses
2 must be disclosed and subject to review by the probation
3 office.

4 THE COURT: I agree to the extent that they are
5 able to access the Internet, which I can't imagine anything
6 that wouldn't. Anyway --

7 MS. RADA-HERRALD: Primarily, given some of the
8 conduct that is included in the PSR regarding the defendant,
9 frankly anything that has a recording device I think the
10 defendant should be required to disclose the possession of
11 to the probation officer given that he took surreptitious
12 videos of a victim.

13 THE COURT: All right. I'll do that too.

14 MR. CAGLE: Judge, I just don't want to leave
15 that -- any comment I have unstated here. I go back to this
16 *Packingham* decision of the U.S. Supreme Court and it seems
17 to me -- I mean, the statute in North Carolina says you
18 can't get on Twitter, Facebook, anything --

19 THE COURT: I'm not saying you can't do it. I'm
20 saying it's going to be subject to search.

21 MR. CAGLE: Well, if you leave the authority to a
22 probation officer, the probation officer shouldn't have any
23 more authority than the state of that case, North Carolina,
24 had.

25 THE COURT: I think North Carolina -- I'm sorry.

1 I'm not meaning to argue with you, Mr. Cagle, although we
2 might enjoy that. What I'm trying to do is fashion
3 realistic conditions and I don't think the ones that are
4 standing conditions now are very well thought out.

5 This tries to prohibit -- let me go back over it. This
6 tries to prohibit visual recorders and cell phones with
7 access to the Internet and the ability to create images or
8 video. I don't know -- I don't know what the *Packingham* --
9 is that the name of the case?

10 MR. CAGLE: *Packingham*.

11 THE COURT: I don't know what that case says, but
12 I think this is unduly restrictive for modern-day society
13 and I sustain the objection to the extent it prohibits the
14 defendant from having such devices.

15 I do order that he disclose the purchase or acquisition
16 of any such item, even for a limited time, to his probation
17 officer and that such items be subject to search by the
18 probation officer. And if that violates *Packingham*, the
19 Fourth Circuit can straighten that out. I don't mean to be
20 flip about it. I'm just trying to do the best I can.

21 MR. CAGLE: Okay.

22 THE COURT: I fortunately have somebody that hands
23 me stuff. *Packingham* mainly dealt with content
restrictions, like the use of social media and so forth.

25 MR. CAGLE: Yes, it did. I mean, that was the

1 focus of it, but the whole point being, though, that that
2 enjoys some First Amendment protection to be able to access
3 those things.

4 In looking ahead to a number of years, I can't imagine
5 the pace that these electronic devices are being produced
6 and what they are capable of, that this will be like the
7 Stone Age.

8 THE COURT: Any federal district judge that's
9 still hanging around can change these conditions at any
10 time.

11 MR. CAGLE: Yes, sir.

12 THE COURT: What I'm required to do now is impose
13 reasonable restrictions and give the defendant notice of
14 them. I'm trying to do that.

15 All right. The next one is the defendant objects to
16 the condition in paragraph 110 that the defendant notify
17 employers, families, friends and others with whom the
18 defendant has regular contact of his convictions as a sex
19 offender and that the defendant is being supervised by a
20 probation officer.

21 Do you want to argue that?

22 MR. CAGLE: Yes, sir. That would appear to
23 require him to tell virtually anybody he comes into contact
24 with that, "Hey, I'm a sex offender." And we laughed about
25 it. It wasn't funny, really, but, "Hey, I'm Connor

1 Putillion and I'm a registered sex offender." That would be
2 his greeting. And I can't imagine that that's -- that is an
3 appropriate condition and that somebody would be in
4 violation of it, that if he met a friend, after release from
5 prison, that he would -- he would have to first tell them,
6 "Hey, I'm a registered sex offender."

7 THE COURT: Ms. Herrald.

8 MS. RADA-HERRALD: Your Honor, this isn't an
9 condition that applies to every casual encounter the
10 defendant has. These are people he has regular contact with
11 and particularly in the scope of employment --

12 THE COURT: Isn't that a requirement of the
13 statute -- by statute for registered sex offenders?

14 MS. RADA-HERRALD: Registered sex offenders must
15 register their employment, but I do not believe there's a
16 criminal provision that requires that they notify employers.
17 The United States would submit that, particularly with
18 regard to employers, it is important that he notify them of
19 his status as a sex offender who is being monitored by the
20 probation office to ensure that he's not employed in a
21 capacity where he would have any contact with minors.

22 THE COURT: I'm not going to do it. I'm not going
23 to impose this condition at all. We don't require axe
24 murderers to tell their employers that they're axe
25 murderers. We don't require some of the most heinous

1 criminals in any other area to tell. We don't require
2 people who are slinging drugs that are killing more people
3 in West Virginia than we killed in the Vietnam War that they
4 have to tell their employers that they're drug addicts or
5 that they've been convicted of a drug crime.

6 Most employers have a blank on their employment form
7 that says: Have you ever been convicted of a felony? That
8 would cover this. And if he lied about it, that would be a
9 problem, but I'll give you -- I'll save your objection to
10 it.

11 MS. RADA-HERRALD: The United States would just
12 like to note, as part of its objection, that sex offenders,
13 based upon the Sex Offender Registration Act and Adam Walsh,
14 are treated differently than other types of offenders.

15 THE COURT: And to the extent that the Congress of
16 the United States has done that, I'm for it. To the extent
17 that I am asked to do it, I won't.

18 MS. RADA-HERRALD: Thank you, Your Honor.

19 THE COURT: So that objection is sustained.

20 The defendant objects to the optional conditions listed
21 in paragraphs 114, 115 and 117. 114 says: The defendant
22 shall not possess minor's clothing, toys, games and the like
23 without permission of the probation officer.

24 115 says: The defendant shall not be employed in any
25 position or participate as a volunteer in any activity that

1 involves contact with minors without written permission from
2 the probation officer. The defendant may not engage in any
3 activity that involves being in a position of trust or
4 authority over any minor.

5 117 says: The defendant shall not possess pictures of
6 minors unless the pictures are of the defendant's children.

7 I find these conditions somewhat draconian, but I will
8 overrule the objection insofar as it limits the pictures he
9 possesses to his own children. That restriction will remain
10 in place.

11 I will not prohibit him from participating in
12 activities that involves contact with minors without written
13 prohibition.

14 There seem to be probably -- I don't know. Maybe not
15 in West Virginia, but in most places about half the people
16 are minors, so it would be pretty hard to engage in any
17 activity where there aren't minors.

18 I will impose the restriction on possessing minor's
19 clothing, toys and games without permission of the probation
20 officer, which will not be unreasonably withheld with regard
21 to someone who has minor children.

22 I'll show the objection of the government. And do you
23 need any objection on this?

24 MR. CAGLE: Judge, the only thing, 117, it was our
25 point here -- and my client brought it up -- what if he got

1 a picture of his son who's in a classroom setting and there
2 are other children shown? If you get the class photo, for
3 example.

4 THE COURT: If I start down the slippery slope of
5 saying it's okay for classrooms, then it becomes okay for
6 swim meets and track meets and basketball games and parades
7 and so forth. I'm going to do this and that's going to be
8 part of the penalty that's imposed for him committing these
9 crimes.

10 Okay. The eighth objection is to the optional
11 condition in 116. There the defendant -- it requires that
12 the defendant shall participate in the district's computer
13 and Internet monitoring program and pay any costs associated
14 therewith and abide by all special conditions therein as
15 directed by the probation officer. Participation in this
16 program is contingent upon all program criteria being met.

17 I don't mean to be super critical of the probation
18 staff, but I don't even understand what that means.

19 MR. CAGLE: Our objection is I don't know what
20 he's being placed on notice for. I don't know what this
21 refers to.

22 THE COURT: At the direction -- this will be the
23 thing. The defendant shall allow the probation officer to
24 monitor any use of computers or devices which may access the
25 Internet.

1 Any other objections?

2 MR. CAGLE: No, sir.

3 MS. RADA-HERRALD: Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. RADA-HERRALD: With regard to that condition,
6 I believe one of the purposes of that is the software and
7 programs that are utilized to monitor these computers, which
8 obviously may be different from when defendant is actually
9 on supervised release, do incur a fairly substantial cost to
10 the probation office and that is one of the reasons that
11 these defendants are, as part of the condition, required to
12 pay the cost of those monitoring programs. To the extent
13 that they choose to have computer equipment and use it, they
14 are responsible for the cost of monitoring it. So I would
15 ask that that also be included on the amended --

16 THE COURT: I'm not going to do it simply because
17 I have no idea what the technology will be like in two years
18 from now, much less whatever the sentence might be. Right
19 now we're still stringing cable in every courthouse in
20 America to put up cameras and to put those fancy locks on
21 doors with lights on them and we already have wireless
22 technology, which will allow us to have the cameras be
23 wireless. We are always about 10 or 15 years behind
24 technology with the federal government. I don't know what
25 it's going to be.

1 This defendant can't misbehave and can't disobey the
2 law. He's got to behave himself and he's got to report as
3 often to the probation officer as the probation officer
4 tells him to.

5 MR. CAGLE: Judge, just one comment. I think you
6 sustained our objection here, but nevertheless, the -- I
7 will point out what the prosecution has said, I don't know
8 that Mr. Putillion will be able to afford the program and I
9 don't think there would be -- I don't know what their
10 provision is.

11 THE COURT: I'm not going to impose it.

12 MR. CAGLE: Thank you.

13 THE COURT: Mr. Putillion, do you have any
14 additional objections?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Are you completely satisfied with the
17 legal representation that you've received from your lawyer
18 from the beginning of his representation until today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I find sufficient indicia of
21 reliability to support the probable accuracy of the matters
22 contained in the presentence report and the addendum
23 thereto. I adopt the presentence investigation report and
24 the addendum, except as otherwise noted in this hearing.

25 I direct the probation office to file a copy of the

1 presentence investigation report in the court file under
2 seal.

3 The defendant stands convicted of attempted receipt of
4 child pornography in violation of 18 United States Code
5 Section 2252A(a) (2) and 2252A(b) (1).

6 Federal law provides the following maximum penalties
7 for violating this statute: A term of imprisonment of not
8 less than five years and not more than 20 years, a period of
9 supervised release of five years to life, a fine of
10 \$250,000, restitution, a special assessment of \$100, and an
11 additional special assessment of \$5,000, and an order of
12 restitution, if one is sought.

13 Is there restitution sought in this case?

14 MS. RADA-HERRALD: There has not been anything
15 filed, Your Honor.

16 THE COURT: Very well. That will not be included.
17 The United States sentencing guidelines, Mr. Putillion, are
18 advisory and are not binding on this court. Nevertheless,
19 while I may not presume them to be reasonable, I am required
20 to carefully calculate them and consider them when arriving
21 at a just sentence. I must also consider the sentencing
22 factors enumerated in 18 United States Code Section 3553(a).
23 Let me begin by calculating the advisory United States
24 sentencing guideline range.

25 The relevant guideline is found in Section 2G2.1 and

1 provides for a base offense level of 32.

2 2G2.1(b)(1)(B) applies if the minor has obtained the
3 age of 12 years, but not the age of 16 years. That applies
4 here and increases the offense level to 34.

5 Section 2G2.1(b)(5) applies if the defendant was a
6 parent, relative or legal guardian of any minor involved in
7 the offense. That applies and it increases the offense to
8 36.

9 If the use of a computer or an inactive computer
10 service is used for the purpose of persuading, inducing,
11 enticing, coercing, for seeking or facilitating, helping out
12 on the crime, you get an additional two points. Almost all
13 of them are any more, but that applies here. That makes the
14 offense level 38.

15 Section 3E1.1(a) provides for a two-level decrease if
16 the defendant, prior to conviction, has assisted authorities
17 in the investigation and prosecution of his own misconduct.
18 I find, based on my adoption of the presentence report, that
19 this defendant has done so and is awarded the two points for
20 acceptance of responsibility.

21 Section 3E1.1(a) provides for an additional or -- 1(b)
22 provides for an additional one-level decrease if the
23 level -- offense level, prior to the adjustment for
24 acceptance of responsibility, is 16 or greater, and the
25 government so moves stating that the defendant has assisted

1 authorities in the investigation and prosecution of his own
2 misconduct, timely notifying the government of his intention
3 to plead guilty and permitting the government to avoid
4 preparation for trial, and permitting the government and
5 court to allocate their resources efficiently.

6 Does the government so move?

7 MS. RADA-HERRALD: Yes, Your Honor.

8 THE COURT: I grant the motion. The third point
9 is awarded. That decreases the offense level to 35.

10 The court finds that the total offense level is 35.

11 The defendant has no criminal history for which
12 criminal history points attach. That establishes a category
13 of criminal history of one.

14 Given a total offense level of 35 and a criminal
15 history category of one, the advisory United States
16 sentencing guideline range is as follows: A term of
17 imprisonment of 168 to 210 months, a period of supervised
18 release of five years to life, a fine of 40,000 to \$250,000,
19 restitution, and a special assessment of \$100.

20 Mr. Cagle, other than your previous objections, is
21 there anything you or Mr. Putillion would like to say with
22 regard to the guideline calculations?

23 MR. CAGLE: Your Honor, I'll stand on what I filed
24 with this court. I don't need -- the court's read it. I've
25 got arguments that I think would support a variance

1 considering your final decision. Mr. Putillion did want to
2 read something to the court.

3 THE COURT: We're going to get to that. This is a
4 three-step dance.

5 MR. CAGLE: I've gotcha. All right.

6 THE COURT: Ms. Herrald, anything the government
7 would like to say concerning the guideline calculations?

8 MS. RADA-HERRALD: No, Your Honor.

9 THE COURT: Section 3553(a) of Title 18 provides
10 several factors that the court must consider when
11 determining an appropriate sentence. Counsel are very
12 familiar with that and have briefed that in their sentencing
13 memorandum.

14 Anything further on the 3553(a) factors, Mr. Cagle?

15 MR. CAGLE: No, sir.

16 THE COURT: Anything further, Ms. Herrald?

17 MS. RADA-HERRALD: Just briefly, Your Honor. The
18 United States has briefed this extensively, but did just
19 want to reiterate a few points. This is particularly
20 egregious conduct. This is a violation of a trusted
21 relationship involving a minor the defendant had known since
22 she was a very little girl and she still is a young girl.

23 His conduct goes beyond that. There's possession of
24 child pornography of an unknown minor. There are
25 surreptitious videos taken of another victim that are

1 obviously also very concerning and the subject of charges in
2 Jackson County.

3 And with regard to the comparison to other cases in
4 this district, this conduct the defendant engaged in for
5 which he is convicted while he was charged and convicted of
6 the attempted receipt that fundamentally involved, as the
7 court noted, the production of sexually explicit images. If
8 that request had been fulfilled, it would have involved the
9 production of child pornography by a 13-year-old.

10 And the guidelines, under the cross-reference, are
11 actually still below the mandatory minimum for a production
12 offense, which is 15 years. A sentence within those
13 guideline range is consistent with other defendants who have
14 engaged in this same type of conduct, that is production.
15 That is the conduct in this case, even if it is not
16 specifically the offense of conviction. That's what we look
17 to under 3553(a) is the conduct.

18 And the cases that were pointed out in the sentencing
19 memos involved sentences 18 years up to 30 years for the
20 statutory maximum. The statutory maximum is imposed -- it's
21 not an unusual circumstance for 30 years to be imposed in a
22 production case. So the guidelines here are imminently
23 reasonable given the defendant's conduct and gross violation
24 of a 13-year-old girl who trusted him. And for that reason,
25 in addition to everything argued in its sentencing memo, the

VICTIM IMPACT STATEMENT

1 United States believes that a guideline sentence, in
2 addition to at least 15 years of supervision, is
3 appropriate.

4 THE COURT: All right.

5 MR. CAGLE: Your Honor, may I --

6 THE COURT: Having disposed of the 3553(a)
7 factors, I'll consider your sentencing memorandum and your
8 arguments.

9 Ms. Herrald, anything that the government would like to
10 offer to the court, by argument or evidence, prior to
11 imposing sentence?

12 You can take a seat, Mr. Putillion. It will be
13 your-all's turn in a bit.

14 MS. RADA-HERRALD: My understanding, Your Honor,
15 is that the victim, "AT," would like to address the court.

16 THE COURT: Very well. She may do so from the
17 podium.

18 MS. RADA-HERRALD: She has also asked if I can
19 stand at the podium with her.

20 THE COURT: You may.

21 MS. RADA-HERRALD: Thank you, Your Honor.

22 **VICTIM IMPACT STATEMENT**

23 THE WITNESS: Your Honor, I'm aware that you have
24 already observed my letter.

25 THE COURT: Could you scoot the microphone over

VICTIM IMPACT STATEMENT

1 just a little bit?

2 THE WITNESS: I'm aware that you've already
3 observed my letter, but I wanted to read it again to the
4 court. And before I do so, I just wanted to say that
5 although this occurrence that happened when I was 13 years
6 old did strengthen me to be the 15-year-old girl I am now, I
7 hope that it does not occur to anybody else.

8 To Whom It May Concern:

9 Have you ever been traumatized? The Webster Dictionary
10 states trauma is defined: Subject to lasting shock as a
11 result of an emotionally disturbing experience and physical
12 injury.

13 I know a girl, a girl who at the age of 13 was
14 traumatized and forever will be her entire life. A girl who
15 was so desperate for someone's love and approval at a time
16 in her life. A girl with anxiety, depression, hypochondria,
17 severe anxiety, a brother whom was never home --

18 THE COURT: Slow down just a tiny bit, please.

19 THE WITNESS: -- family members she thought would
20 never accept her, bullies at school, from adult to child,
21 all on one tiny little girl's shoulders from what felt like
22 the day she was born.

23 That same girl, at only the age of 13 years old,
24 encountered a monster in her own backyard. This girl was
25 compelled by a man she believed would be the brother she

VICTIM IMPACT STATEMENT

1 never had, wanted to listen, through all the troubles she
2 had encountered at such a young age that was truly her
3 entire life.

4 As life would have it for her, the character that was
5 portrayed to her as broad and strong and determined,
6 thoughtful, charming and intelligent was exactly that, but
7 in all the wrong ways.

8 Being broad and strong gave him abilities to increase
9 the fear he wanted to instill in her. Being determined
10 allowed him to progress through his plans of deceit no
11 matter what he had to do. His thoughtfulness was nothing
12 but a tactic to lure her into his prey, along with the
13 charming side of him. The intelligence he withheld only
14 made it detrimental to her escape, physically and mentally
15 seeing that he would always know what he was doing and how
16 he was to do it and when.

17 What better person and better time?

18 This girl took a step, a step to tell a secret she
19 swore to never tell, not just to him, but to herself, in
20 hopes that maybe you or anyone can make a difference.

21 Now, at age 15, a life still ahead of her, she fears
22 any and every man that not only walks by, but dwells within
23 her own life. With two young nephews at home, she lays
24 awake wondering if they were to genetically carry the
25 factors their father had and how she can possibly protect

VICTIM IMPACT STATEMENT

1 them from that.

2 For months at a time, when she couldn't sleep, she
3 dreamed of the revenge that he may have for her. Not just
4 any dreams, but dreams of death to all that she loved, but
5 for her only to watch. A girl at such age should never have
6 the conception of what has happened to her, but she does and
7 she always will, no matter how many appointments or
8 prescribed medicines, no matter how many times she hears it
9 will be okay or how many times she smiles through her hidden
10 story.

11 The worst part is that girl is me.

12 THE COURT: Anything further, Ms. Herralde?

13 MS. RADA-HERRALD: No, Your Honor.

14 THE COURT: All right. Mr. Cagle, anything that
15 you or your client would like to say before I impose
16 sentence, or do you have any witnesses?

17 MR. CAGLE: My client does wish to speak, Your
18 Honor.

19 THE COURT: All right. If you would speak right
20 into that microphone, please.

21 THE DEFENDANT: Your Honor, I've always been
22 someone that has taken responsibility for my actions. That
23 is a value that I have held dearly my whole life.
24 Regardless of the outcome that has faced me, I've always
25 been the one in the room to raise my hand and say that I was

1 the one who did it.

2 At a very young age I felt that I was the one who had a
3 responsibility to serve my country and help those around me.
4 I dreamed of being a Marine and days after my 17th birthday
5 I signed the papers to make it so. While in the Marines, it
6 actually became a goal of mine to become a West Virginian
7 State Police Officer and repay the state that had taught me
8 so much for being a man. Obviously these goals are no
9 longer feasible in my life.

10 While in the Marines I had gotten my fiancee pregnant
11 and I was faced once again with another decision. My
12 options were to take responsibility for my actions and be a
13 father, or I could cover it up and I could discard the
14 people that I loved from my life.

15 Once again, however, I took responsibility knowing that
16 the repercussions would force me to leave one of the most
17 elite units in the Marine Corps, a unit of presidential
18 security of less than 300 active Marines out of 187,000
19 Marines would have the opportunity to serve in.

20 However, due to my good record and rapport with my
21 senior officers, they sent me to another high-level unit at
22 the Pentagon and they allowed me the opportunity to be close
23 to my child and my wife.

24 While being a father, it was absolutely the most
25 rewarding time in my life. When these allegations came to

1 light, and in more ways than one, it was her word against
2 mine. However, I did what I thought was right and I took
3 responsibility for what I did. And when I did so, and it
4 came out to my wife, I knew that I automatically had sealed
5 myself to be in prison. This was something I'd been
6 expecting for a while now, ever since I sent that e-mail.

7 I knew that I would lose my children. I knew that I
8 would lose my career. I would lose my freedom and I would
9 lose my family and the people that I love and the people
10 that still love me that I may never have the opportunity
11 to -- that I may never have the opportunity to be with
12 again.

13 I'm sorry for what I've done. My actions were wrong
14 and they were unlawful and I've brought shame to myself, to
15 my family, to my two boys, and to my country. I hope that
16 you can see through what I've done and see who I used to be
17 and who I can still be. I can be a loving father. I can be
18 a productive member of society. I can be a good man. And I
19 hope that you can see through to the man that I am and that
20 I can be and that you'll instill the confidence in me to
21 give me a second opportunity at life.

22 And I'd also -- I don't know really if I'm allowed to
23 do this, but I'm sorry, guys, really. I really am. I know
24 I messed up and it's not your guys' fault.

25 THE COURT: Tell me why you received a less than

1 honorable discharge from the Marines.

2 THE DEFENDANT: Due to my charges. I was on track
3 to receive an honorable discharge. I was about to actually
4 receive an ankle surgery and then more than likely get
5 medically discharged.

6 THE COURT: So this occurred before you were
7 discharged?

8 THE DEFENDANT: Yes, sir. I got arrested on days
9 and I went to jail in uniform. It was pretty --

10 THE COURT: That just wasn't clear to me from the
11 report.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Anything further?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. The court will be in
16 recess for ten minutes.

17 (Recess held from 3:40 p.m. to 3:50 p.m.)

18 THE COURT: All right. Mr. Putillion, if you and
19 your lawyer would stand again.

20 It is the judgment of the court that the defendant be
21 committed to the custody of the Federal Bureau of Prisons
22 for a term of 96 months.

23 Upon release from prison, the defendant shall be placed
24 on supervised release for a term of 25 years.

25 Within 72 hours of your release from prison, you shall

1 report in person to the probation office in the district to
2 which you're released.

3 While you're on supervised release, you must not commit
4 another federal, state or local offense; you must not
5 possess any dangerous device or firearm; you must not
6 possess any unlawful controlled substance; you must comply
7 with the standard terms and conditions of supervised
8 release, including the special conditions that are set forth
9 in the presentence report as modified by me here today.

10 You are also subject to our local rules of criminal
11 procedure, which contain certain standard conditions.

12 I find that you don't have the resources to pay a fine
13 now and are unlikely to become likely to pay a fine in the
14 future and I impose no fine.

15 There being no request for restitution, the court does
16 not order restitution.

17 I order you to pay the special assessment of \$100, plus
18 the \$5,000 special assessment.

19 Finally, after considering the advisory guideline range
20 and the applicable factors from 3553(a) of Title 18, I find
21 that the sentence of 96 months, followed by 25 years of
22 supervised release, is reasonable and appropriate for a
23 number of reasons:

24 Section 2G2.2, the child pornography guideline, is not,
25 in my opinion, entitled to the usual deference due the

1 guidelines. The Sentencing Commission was established to
2 eliminate gross disparities in sentencing, to control crime
3 through incapacitation and deterrence and to rehabilitate
4 offenders.

5 The sentencing guidelines are generally the product of
6 careful study, based on extensive empirical evidence,
7 derived from the review of thousands of individual
8 sentencing decisions. Some, however, like this guideline
9 2G2.2, are not grounded in empirical analysis, but rather
10 are statutory directives.

11 The Supreme Court has recognized that such guidelines
12 do not exemplify the Commission's exercise of its
13 characteristic institutional role; that's in *Kimbrough*. The
14 sentences recommended by 2G2.2 are simply too long, in my
15 opinion.

16 While I do not categorically reject the child
17 pornography guidelines, I do not give them the same weight
18 as I accord other guidelines.

19 I should also note that the sentence for the actual
20 sexual abuse of a minor has a base offense level of 18. At
21 a criminal history category of one, a total offense level of
22 18 carries a sentence of 27 to 33 months with no mandatory
23 minimum.

24 The maximum term of imprisonment for the use of a minor
25 to produce obscene matter or assist in doing sexually

1 explicit conduct, under West Virginia state law, is a
2 maximum of ten years' imprisonment.

3 Giving full weight here to the guidelines would produce
4 the result of at least 168 months, 14 years. As defense
5 counsel has pointed out, not applying the cross-reference
6 would have resulted in a guideline range of 30 to 37 months
7 before considering the mandatory minimum.

8 Mr. Putillion is a 22-year-old appearing for his first
9 federal conviction with no criminal history. He reports
10 having a good childhood and denies any instances of abuse or
11 neglect. He has two children who now live with his ex-wife.

12 Mr. Putillion reports that he suffers from anxiety and
13 is currently prescribed medication. He denies any past or
14 current thoughts of suicide.

15 He does have a history of drug abuse. While living in
16 D.C., he was snorting Suboxone, Xanax and Klonopin
17 approximately three to four times per week. He claims that
18 he took niacin to cleanse his system before he took
19 employment drug screens.

20 He enlisted in the U.S. Marine Corps and prior to his
21 discharge served as a member of the Presidential Security
22 detail at the Pentagon and then as an infantry soldier.
23 Prior to the instant offense, by all accounts, he appeared
24 to be a productive member of society, but I wonder if the
25 time in Washington that you were serving on the Presidential

1 Security Program, was that the same time you were abusing,
2 snorting Suboxone, Xanax and Klonopin?

3 THE DEFENDANT: That was not, sir.

4 THE COURT: I will assume it wasn't.

5 Here you drove "AT" from West Virginia to Alexandria
6 while you played what you called the nervous game, slowly
7 moving your hand up her inner thigh until she became
8 nervous. You sought numerous times nude photographs using
9 the Snapchat application. Your cellular phone contained
10 videos of unknown pubescent females engaging in sexual
11 conduct.

12 A search history of your cell phone included Web
13 searches for the best daddy teen girls, amateur teens,
14 Disney princess porn and new naked young girls.

15 It should be noted that there are pending charges
16 against Mr. Putillion in state court for sexual assault and
17 soliciting a minor.

18 I would tell you that while your sentence, as I have
19 imposed it, is below the guideline range with the
20 enhancement, it is somewhat higher than I would normally
21 impose with my disagreement with the guidelines and that is
22 principally because your behavior in this case is abhorrent
23 and your statement to the court was very unconvincing.

24 I included a very long term of supervised release
25 because I have very little confidence that you will be able

1 to control your impulses. You had to know that with a close
2 relative and with the requests you were making that there
3 was a very good chance that you would be caught, but you
4 couldn't stop. Nine years is a long time.

5 For reasons other than that discussed, does counsel for
6 the defendant or government know of any reason why sentence
7 should not now be imposed as stated?

8 MS. RADA-HERRALD: No, Your Honor.

9 MR. CAGLE: No, Your Honor.

10 I would ask that the court recommend Lexington, if at
11 all possible.

12 THE COURT: I will recommend it if it's deemed
13 suitable by the Bureau of Prisons for his offense.

14 MR. CAGLE: Yes.

15 THE COURT: But I recognize that it is somewhat
16 close to home and is a facility that may well be
17 appropriate, so I'll put that recommendation in.

18 MR. CAGLE: Thank you.

19 THE COURT: Anything further?

20 MS. RADA-HERRALD: Briefly, Your Honor, just back
21 to the very beginning of the hearing, I did just want to
22 clarify, I realized it was a bit unclear in the record, you
23 had asked about an objection by the United States with
24 regard to the dismissal of the remaining charges in the case
25 and the rejection of the plea agreement.

1 The United States does not have an objection to the
2 dismissal of the charges, as that was part of the plea
3 agreement, but the United States did want to preserve its
4 objection to the rejection of the plea agreement itself.

5 THE COURT: Okay. The only thing I would say to
6 that is that the plea agreement, in order to be carried out
7 under the rules and under the established law in this
8 country, has to be carried out after approval by the court.
9 And the time that it was carried out almost all substantive
10 parts, I had not approved the plea agreement.

11 I recognize that there were things like restrictions on
12 rights to appeal and so forth that remained of the plea
13 agreement. I think the words I used at the time was it was
14 moot, but that's not technically correct. And so to the
15 extent you object to whatever was left of the plea
16 agreement, after you've dismissed all the other charges,
17 your objection is noted.

18 MS. RADA-HERRALD: Thank you, Your Honor.

19 THE COURT: 96 months, of course, is eight years.
20 I think I may have said nine years.

21 I'll say this to you only because there are a lot of
22 family and other people here. We impose sentences in
23 federal court by months and sometimes I have defendants walk
24 out of here trying to do the division and they make
25 mistakes, as I just did, and say the wrong amount of years.

1 Here it is eight years. The mandatory sentence for this
2 offense is five years.

3 I've long held the personal view that once you get past
4 seven years, I'm not sure how much more you get by way of
5 deterrence or rehabilitation or most of the other goals, but
6 you do get the additional time of protection of the public.
7 This is a very despicable crime and a very sad day for these
8 families.

9 Mr. Putillion, you're remanded to the custody of the
10 marshal for delivery to the Bureau of Prisons for the
11 service of your sentence.

12 Court's adjourned.

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14 (Proceedings concluded at 4:00 p.m., May 22, 2019.)

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1 CERTIFICATION:

2 I, Kimberly Kaufman, Official Court Reporter, certify
3 that the foregoing is a correct transcript from the record
4 of proceedings in the matter of United States of America,
5 Plaintiff v. Connor Anthony Putillion, Defendant, Criminal
6 Action No. 2:18-cr-00186, as reported on May 22, 2019.

7

8 s/Kimberly Kaufman, RMR, CRR, CRC August 19, 2019

9 Kimberly Kaufman, RMR, CRR, CRC DATE

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